

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).103 OF 2012

NIVEDITA SINGH

APPELLANT(S)

VERSUS

DR. ASHA BHARTI & ORS.

RESPONDENT(S)

O R D E R

The present appeal is directed against an order passed by National Consumer Disputes Redressal Commission (for short, 'NCDRC') on 26.05.2010 affirming the order passed by the District Consumer Disputes Redressal Forum and the State Consumer Disputes Redressal Commission, dismissing the complaint filed by the appellant *inter alia* on the ground that the appellant was not a consumer within the meaning of Section 2(1)(d)(ii) of the Consumer Protection Act, 1986 (for short, 'the Act').

Learned counsel for the appellant relies upon a receipt dated 27.08.2004 of payment of Rs.266/- as service charge to the District Women Hospital, Ghazipur. It is admitted by learned counsel for the appellant that no consideration was paid to the doctors who were in fact the Government servants.

In terms of Section 2(1)(d)(ii) of the Act, a consumer is the one who hires or avails of any services for a 'consideration' which has been paid or promised or partly paid or partly promised.

Since the admitted case of the appellant is that the appellant has not paid any consideration for availing the services of the respondents - doctors and the nurses, she would not be covered under the definition of consumer to avail the remedies under the Act. In fact, in a common written statement filed, an objection was raised that the appellant should file a suit in a competent Civil Court by depositing proper court fee and not in Consumer Court as the suit is not maintainable before the Consumer Court.

Learned counsel for the appellant relies upon a judgment of this Court reported in (1995) 6 SCC 651 titled "Indian Medical Association Vs. V.P. Shantha & Ors." to contend that payment for service availed is not a necessary ingredient to file a complaint under the Act. However, we find that the said argument is not tenable in view of the following findings recorded:-

*"45. In respect of the hospitals/nursing homes (government and non-government) falling in category (i), i.e., where services are rendered free of charge to everybody availing of the services, it has been urged by Shri Dhavan that even though the service rendered at the hospital, being free of charge, does not fall within the ambit of Section 2(1)(o) of the Act insofar as the hospital is concerned, the said service would fall within the ambit of Section 2(1)(o) since it is rendered by a medical officer employed in the hospital who is not rendering the service free of charge because the said medical officer receives emoluments by way of salary for employment in the hospital. There is no merit in this contention. the medical officer who is employed in the hospital renders the service on behalf of the hospital administration and if the service, as rendered by the hospital, does not fall within the ambit of Section 2(1)*

*(o), being free of charge, the same service cannot be treated as service under Section 2(1)(o) for the reason that it has been rendered by a medical officer in the hospital who receives salary for employment in the hospital. There is no direct nexus between the payment of the salary to the medical officer by the hospital administration and the person to whom service is rendered. The salary that is paid by the hospital administration to the employee medical officer cannot be regarded as payment made on behalf of the person availing of the service or for his benefit so as to make the person availing the service a "consumer" under Section 2(1)(d) in respect of the service rendered to him. The service rendered by the employee-medical officer to such a person would, therefore, continue to be service rendered free of charge and would be outside the purview of Section 2(1)(o)."*

A reading of the above para shows that a medical officer who is employed in a hospital renders service on behalf of the hospital administration and if the service as rendered by the Hospital does not fall within the ambit of 2(1)(0) of the Act being free of charge, the same service cannot be treated as service under Section 2(1)(0) for the reasons that it has been rendered by medical officer in the hospital who receives salary for the employment in the hospital. It was thus concluded that the services rendered by employee-medical officer to such a person would therefore continue to be service rendered free of charge and would be outside the purview of Section 2(1)(0) of the Act.

In view thereof, we do not find any merits in the present appeal and the same is dismissed.

Pending application(s), if any, also stand disposed of.

.....J.  
[HEMANT GUPTA]

.....J.  
[V. RAMASUBRAMANIAN]

NEW DELHI;  
7<sup>th</sup> DECEMBER, 2021

ITEM NO.102

COURT NO.11

SECTION XVII-A

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 103/2012

NIVEDITA SINGH

Appellant(s)

VERSUS

DR. ASHA BHARTI & ORS.

Respondent(s)

Date : 07-12-2021 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HEMANT GUPTA  
HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

For Appellant(s) Mrs. Niranjana Singh, AOR  
Mr. Atul Tripathi, Adv.

For Respondent(s) Ms. Prerna Singh, Adv.  
Mr. T. Mahipal, AOR  
  
Ms. Manjeet Chawla, AOR  
Ms. Neerja Sachdeva, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

The appeal is dismissed in terms of the signed order.  
Pending application(s), if any, also stand disposed of.

(SWETA BALODI)  
COURT MASTER (SH)

(RENU BALA GAMBHIR)  
COURT MASTER (NSH)

(Signed order is placed on the file)